

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 2175

Introduced by Senator Alpert

February 20, 1998

An act to amend Sections 17550.3, 17550.5, 17550.9, 17550.10, 17550.13, 17550.14, 17550.15, 17550.16, 17550.17, 17550.19, 17550.20, 17550.21, 17550.23, 17550.30, 17550.37, 17550.38, 17550.41, 17550.43, 17550.44, 17550.46, 17550.53, 17550.57, and 17550.58 of, to repeal and add Section 17550.47 of, and to repeal Sections 17550.12, 17550.32, 17550.33, 17550.34, and 17550.59 of, the Business and Professions Code, relating to travel.

LEGISLATIVE COUNSEL'S DIGEST

SB 2175, as amended, Alpert. Sellers of travel: travel consumer restitution plan.

Existing law provides a comprehensive scheme for the regulation of sellers of travel, which would be terminated as of January 1, 1999.

This bill would delete that termination provision, thereby extending the regulatory scheme indefinitely. The bill would revise and recast various of those regulatory provisions, as specified, and also various related provisions dealing with the Travel Consumer Restitution Corporation.

Among other things, the bill would increase the amount of initial assessments for operations and impose a one-time additional funding assessment for the Restitution Fund on participants making their initial payment to the Travel Consumer Restitution Corporation. The bill would reduce and revise the amount of an authorized annual emergency

assessment, provide for an emergency operations fund assessment, and make related changes.

Since any violation of the provisions regulating sellers of travel would be a crime punishable as a misdemeanor or, in some instances, a felony, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17550.3 of the Business and
2 Professions Code is amended to read:

3 17550.3. "Passenger" is a person on whose behalf
4 money or other consideration has been given or is to be
5 given to another, including another member of the same
6 partnership, corporation, joint venture, association,
7 organization, group, or other entity, for air or sea
8 transportation, other travel services, or both, *for that*
9 *person*.

10 SEC. 2. Section 17550.5 of the Business and
11 Professions Code is amended to read:

12 17550.5. "Ticket or voucher" means a writing that is
13 itself good and sufficient to obtain the entire air or ocean
14 transportation, or travel services, which the passenger
15 has purchased.

16 SEC. 3. Section 17550.9 of the Business and
17 Professions Code is amended to read:

18 17550.9. "Travel services" includes, but is not limited
19 to, lodging, surface transportation, transfers, tours, meals,
20 guides, baggage transfer, sightseeing, recreational
21 activities, vehicle rental, or other travel-related services,
22 however denominated, including, but not limited to,
23 travel certificates, registration fees, and processing fees.

1 “Travel services” does not include travel services
2 rendered by providers of lodging such as a hotel, motel,
3 or similar lodging establishment where the provider of
4 lodging supplies only that service.

5 SEC. 4. Section 17550.10 of the Business and
6 Professions Code is amended to read:

7 17550.10. “Travel certificate” means a writing that
8 represents the holder is entitled to air or sea
9 transportation or travel services, to a discount or reduced
10 price for that transportation or those travel services, or to
11 purchase that transportation or those travel services from
12 a specified source, whether or not the holder is required
13 to pay additional money or fulfill any requirements in
14 order to utilize the certificate.

15 SEC. 5. Section 17550.12 of the Business and
16 Professions Code is repealed.

17 SEC. 6. Section 17550.13 of the Business and
18 Professions Code is amended to read:

19 17550.13. (a) A seller of travel shall not receive any
20 money or other valuable consideration in payment for air
21 or sea transportation or other travel services offered by
22 the seller of travel unless at the time of or prior to the
23 receipt of payment the seller of travel first furnishes to
24 the person making that payment written materials
25 conspicuously setting forth the following information:

26 (1) The name and business address and telephone
27 number of the seller of travel.

28 (2) The total amount to be paid by or on behalf of the
29 passenger, amount paid to date, the date of any future
30 payment, the purpose of the payment made, and an
31 itemized statement of the balance due, if any.

32 (3) The name of the provider of the air or sea
33 transportation, and the date, time, and place of each
34 departure, or the circumstances under which the date,
35 time, and place of departure will be determined.

36 (4) All terms and conditions relating to the air or sea
37 transportation or travel services being purchased by the
38 passenger, including cancellation conditions. An air
39 ~~carrier or an ocean carrier~~ *carrier’s or an ocean carrier’s*
40 standard contract of carriage is not required to be

1 disclosed prior to the seller of travel receiving any money
2 or other valuable consideration.

3 There is no violation of this subdivision if both of the
4 following occur:

5 (A) Compliance was rendered impossible as a direct
6 result of an unforeseen condition beyond the control of
7 the seller of travel.

8 (B) The seller of travel obtains from each passenger
9 written acknowledgment that the passenger has not
10 received disclosure of the terms and conditions required
11 by this section.

12 (5) A clear and conspicuous statement that upon
13 cancellation of the transportation or travel services,
14 where the passenger is not at fault and has not canceled
15 in violation of any terms and conditions previously clearly
16 and conspicuously disclosed to and agreed to by the
17 passenger, all sums paid to the seller of travel for services
18 not provided will be promptly paid to the passenger,
19 unless the passenger otherwise advises the seller of travel
20 in writing, after cancellation.

21 (6) If the seller of travel is required by this article to
22 have a trust account or bond, a clear and conspicuous
23 disclosure stating: "California law requires certain sellers
24 of travel to have a trust account or bond. This business has
25 [a trust account] or [a bond issued by (company)] in the
26 amount of (\$X)."

27 (7) If the seller of travel is a participant in the Travel
28 Consumer Restitution Fund, a clear and conspicuous
29 notice of the passenger's right to make a claim on that
30 fund. The notice shall include a description of the losses
31 covered, the method for making a claim, the time limit
32 within which the claim shall be made, and the amount
33 which may be claimed.

34 (8) If the seller of travel is a participant in a Consumer
35 Protection Deposit Plan that meets the criteria set forth
36 in subdivision (b) of Section 17550.16, a clear and
37 conspicuous notice of the passenger's right to make a
38 claim on the plan. That notice shall include a description
39 of the losses covered, the method for making a claim, the



1 time limit within which the claim shall be made, and the
2 amount which may be claimed.

3 (9) If the seller of travel is a participant in a Consumer
4 Protection Escrow Plan that meets the criteria set forth
5 in subdivision (c) of Section 17550.16, a clear and
6 conspicuous notice of the passenger's right to make a
7 claim on the plan. That notice shall include a description
8 of the losses covered, the method for making a claim, the
9 time limit within which the claim shall be made, and the
10 amount that may be claimed.

11 (10) If the seller of travel is not a participant, a clear
12 and conspicuous disclosure that the seller of travel is not
13 a participant in the Travel Consumer Restitution Fund.
14 That disclosure shall be made both orally and in writing.

15 (11) If the seller of travel has its principal place of
16 business in California and the passenger is located outside
17 California, a clear and conspicuous disclosure that the
18 transaction is not covered by the Travel Consumer
19 Restitution Fund. That disclosure shall be made both
20 orally and in writing.

21 (b) If a seller of travel offers, sells, provides, or
22 distributes a travel certificate as defined in Section
23 17550.10 and any passenger payment is nonrefundable, in
24 whole or in part, the seller of travel shall obtain the
25 written acknowledgment of that ~~condition—limitation~~
26 from the end user prior to, or at the time of, receipt of any
27 money or other valuable consideration.

28 (c) Notwithstanding any other provision of this
29 section, if money or other valuable consideration is
30 received from a customer to whom the seller of travel has
31 sold air or sea transportation within the preceding 12
32 months, the disclosures required by this section shall be
33 made within five days of receipt of that money or other
34 valuable consideration.

35 (d) Notwithstanding any other provision of this
36 section, if money or other valuable consideration is
37 received in payment for air transportation and (1) the
38 seller of travel is an officially appointed agent in good
39 standing of the Airlines Reporting Corporation and ~~he or~~
40 ~~she~~ (2) *the seller of travel* forwards the amount paid,

1 without offsetting or reducing the amount forwarded by
2 any amounts due or claimed in connection with any other
3 transaction, to the airline providing the transportation or
4 to the Airlines Reporting Corporation, the disclosures
5 required by this section *with respect to that air*
6 *transportation* may be made orally.

7 SEC. 7. Section 17550.14 of the Business and
8 Professions Code is amended to read:

9 17550.14. (a) The seller of travel has an obligation
10 either to provide the air or sea transportation or travel
11 services purchased by the passenger, or to make a refund
12 as provided by this section. ~~In the event the~~
13 ~~transportation or travel services are not provided, the~~
14 ~~seller~~ The seller of travel shall return to the passenger all
15 moneys paid for air or sea transportation or travel services
16 not actually provided to the passenger, within either of
17 the following periods, whichever is earlier:

18 (1) Thirty days of one of the following dates:

19 (A) The scheduled date of departure.

20 (B) The day the passenger requests a refund.

21 (C) The day of cancellation by the seller of travel.

22 (2) Three days from the day the seller of travel is first
23 unable to provide the air or sea transportation or travel
24 services.

25 As used in this section, “unable to provide” includes,
26 but is not limited to, any day on which the passenger’s
27 funds are not in the trust account required by Section
28 17550.15 and subdivision (g) of Section 17750.21, or the
29 funds necessary to provide the passenger’s transportation
30 or travel services have been disbursed other than as
31 allowed by Section 17550.15 or subdivision (a) of Section
32 17550.16.

33 (b) Where the seller of travel has disbursed the
34 passenger’s funds pursuant to paragraph (1), (2), (3), or
35 (4) of subdivision (c) of Section 17550.15, the seller of
36 travel may, instead of providing a refund, provide to the
37 passenger a written statement accompanied by bank
38 records establishing that the passenger’s funds were
39 disbursed as required by those provisions and, if disbursed
40 to a seller of travel, proof of current registration of that

1 seller of travel. A seller of travel who is exempt from the
2 requirements of Section 17550.15 pursuant to subdivision
3 (a) of Section 17550.16 and who is in compliance with
4 subdivision (a) of Section 17550.16 may comply with this
5 section by maintaining and providing to the passenger
6 documentary proof of disbursement in compliance with
7 subdivision (a) of Section 17550.16, and proof of current,
8 registration of the seller of travel to whom the funds were
9 disbursed, which registration shall note that the
10 registered seller of travel either has a trust account in
11 compliance with Section 17550.15, or is exempt from the
12 requirements of Section 17550.15 pursuant to subdivision
13 (b) or (c) of Section 17550.16.

14 (c) If terms and conditions relating to a refund upon
15 cancellation by the passenger have been disclosed and
16 agreed to by the passenger, and the passenger elects to
17 cancel for any reason other than a seller of travel being
18 unable to provide the air or sea transportation or travel
19 services purchased, the making of a refund in accordance
20 with those terms and conditions shall be deemed to
21 constitute compliance with this section.

22 (d) Any material misrepresentation by the seller of
23 travel shall be deemed to be a violation of this article and
24 cancellation by the seller of travel, necessitating a refund
25 as required by subdivision (a).

26 SEC. 8. Section 17550.15 of the Business and
27 Professions Code is amended to read:

28 17550.15. (a) This section applies to a seller of travel
29 as defined in Section 17550.1.

30 (b) The seller of travel shall deposit directly into a
31 trust account in a federally insured bank, savings and loan
32 association, or credit union 100 percent of all sums
33 received from any person or entity, including, but not
34 limited to, those payments made in cash, by credit card,
35 or any other method of payment, for air or sea
36 transportation for any person, or for any travel services
37 offered by the seller of travel, and any refunds made by
38 carriers or providers of travel services. This subdivision
39 does not require that a seller of travel establish a separate
40 trust account for each transaction.

1 (c) The seller of travel shall not in any manner
2 encumber the corpus of the trust account and shall not
3 withdraw money therefrom except as follows:

4 (1) In partial or full payment to the carrier for
5 transportation, or to the provider of travel services, for
6 the services or transportation purchased by the
7 passenger.

8 (2) In partial or full payment to the carrier or provider
9 of travel services if payment is made by wire transfer
10 directly to an account of the Airlines Reporting
11 Corporation, or by check or draft paid to the Airlines
12 Reporting Corporation for the transportation or services
13 contracted for by the passenger.

14 (3) Upon delivery of all tickets or vouchers necessary
15 for the passenger to obtain from the carrier or provider
16 of travel services the transportation or services purchased
17 by the passenger, at which time the seller of travel may
18 withdraw the portion of the sum paid by the passenger
19 that is due the seller of travel as compensation for sale of
20 the transportation or travel services to that passenger.
21 Tickets or vouchers shall be deemed delivered if
22 personally delivered, turned over to an independent
23 third-party delivery service for regular delivery to the
24 passenger at the address designated by the passenger on
25 the next business day, or deposited in the United States
26 mail with first-class postage prepaid.

27 (4) Upon full payment to the provider of
28 transportation or travel services, directly to the trust
29 account identified in the registration of another seller of
30 travel to whom the funds are paid, or to another
31 registered seller of travel whose registration states that
32 the other registered seller of travel is exempt pursuant to
33 subdivision (b) or (c) of Section 17550.16 from the
34 requirements of this section, of the total amount that is
35 required by the carrier or provider of transportation or
36 travel services or other registered seller of travel in order
37 to provide the transportation or services purchased by
38 the passenger, at which time the seller of travel may
39 withdraw from the trust account that portion of the sum
40 paid by the passenger which is commission due the seller

1 of travel for sale of the transportation or travel services to
2 that passenger.

3 (5) To make refunds to the passenger.

4 (d) Subdivision (c) shall not prevent payment of the
5 interest earned on the trust account to the seller of travel.

6 (e) The seller of travel shall serve as trustee of the trust
7 accounts required by this article. If an individual person
8 is the seller of travel, the individual person shall be the
9 trustee; if the seller of travel is a corporation, partnership,
10 limited liability company, or other legal entity, a
11 managing partner or partners, or the chief executive
12 officer of the corporation, or executive officer or manager
13 of a limited liability company shall be the trustee. The
14 trustee may designate in writing that an officer or
15 employee may manage the trust account if that officer or
16 employee is under the trustee's supervision and control,
17 and the original of that writing is on file with the Attorney
18 General's office.

19 (f) (1) Except as otherwise provided in this section,
20 all trust accounts required by this article shall be
21 maintained at a branch of a federally insured bank,
22 savings and loan association, or credit union.

23 (2) The seller of travel shall file with the Attorney
24 General an irrevocable agreement in writing allowing
25 the Attorney General, a district attorney, or their
26 representatives, upon written request, to examine and
27 obtain copies of all business records, including, but not
28 limited to, those related to the trust account wherever
29 ~~those records may be, including, but not limited to, those~~
30 ~~records maintained by the financial institution where~~
31 ~~business accounts are maintained. The~~ *those records may*
32 *be, and including, but not limited to, those records*
33 *relating to any travel business account, or any account*
34 *used for any travel business transaction, or account to*
35 *which trust funds have been deposited. The* statement
36 shall indicate that the authorization remains in effect as
37 long as the seller of travel, financial institution, or other
38 custodian of records retains records.

1 (g) Every seller of travel has a fiduciary responsibility
2 with respect to all sums received for transportation or
3 travel services.

4 (h) The following are deemed to be held in trust for
5 passengers:

6 (1) All sums received by the seller of travel for
7 transportation or travel services whether or not required
8 to be deposited in an actual trust account and regardless
9 of whether any of these sums were required to be
10 deposited or actually were deposited in a trust account.

11 (2) All property with which any of the sums described
12 in paragraph (1) has been commingled if any of these
13 sums cannot be identified because of the commingling.

14 (i) Upon any judicially ordered distribution of any
15 money or property required to be held in trust and after
16 all expenses of distribution approved by the court have
17 been paid, every passenger has a claim on the trust for
18 payments made for transportation and other travel
19 services not provided. Unless a passenger can identify his
20 or her funds in the trust within the time established by the
21 court, each passenger shall receive a proportional share
22 based on the amount paid.

23 (j) The seller of travel is not required to comply with
24 the direct deposit requirement set forth in subdivision
25 (b) if all of the following apply:

26 (1) The payment is made by credit card.

27 (2) The seller of travel does not deposit, negotiate, or
28 factor the credit card charge or otherwise seek or obtain
29 payment of the credit card charge or the crediting of the
30 amount of the credit card charge to any account over
31 which the seller of travel has any control.

32 (3) (A) If the charge includes transportation, the
33 carrier that is to provide the transportation processes the
34 credit card charge.

35 (B) If the charge is only for services, the provider of
36 services processes the credit card charge.

37 (k) In lieu of the trust account required by this article,
38 an adequate bond as set forth in Section 17550.11 may be
39 maintained by the seller of travel. Prior to the
40 advertisement of transportation or services, or both, by

1 the seller of travel, the seller of travel shall file a copy of
2 that bond with the Attorney General.

3 SEC. 9. Section 17550.16 of the Business and
4 Professions Code is amended to read:

5 17550.16. (a) A seller of travel is exempt from the
6 requirements of subdivisions (a) to (f), inclusive, of
7 Section 17550.15 for all transactions in which the seller of
8 travel is in compliance with paragraphs (1) to (6),
9 inclusive, or with paragraph (7).

10 (1) The seller of travel sells, provides, furnishes,
11 contracts for, or arranges air or sea transportation in
12 transactions with persons in California, only from
13 locations in California, and the air or sea transportation or
14 travel services are to be furnished by (A) a registered
15 seller of travel that is in compliance with this article and
16 Article 2.7 (commencing with Section 17550.35) or (B) an
17 air or sea carrier.

18 (2) The seller of travel forwards the passenger's funds,
19 without offsetting or reducing the amount forwarded by
20 any amounts due or claimed in connection with any other
21 transaction, to (A) the provider of the transportation or
22 travel services; (B) the Airlines Reporting Corporation;
23 (C) the trust account identified in the registration of the
24 seller of travel to whom the funds are forwarded; or (D)
25 a registered seller of travel whose registration states that
26 the registered seller is exempt pursuant to subdivision (b)
27 or (c) from the requirements of Section 17550.15; and the
28 seller of travel who forwards funds pursuant to
29 subparagraph (C) or (D) obtains and keeps a copy of the
30 registration referred to in subparagraph (C) or (D).

31 (3) The seller of travel is an officially appointed agent
32 in good standing of the Airlines Reporting Corporation;
33 and the air transportation, if any, is sold to the passenger
34 pursuant to that agency appointment.

35 (4) The seller of travel has been in business under the
36 same ownership for a period of three years, unless
37 acquired or formed by a registered seller of travel that has
38 been in business under the same ownership for a period
39 of three years. For the purposes of this paragraph, the
40 following shall not constitute a change in ownership:

1 (A) Any structural change involving a change in the
2 type of entity, such as from a corporation to a partnership,
3 and not involving the addition of any new, underlying
4 ownership interest.

5 (B) The deletion of any owner or ownership interest.

6 (5) The seller of travel sells, provides, furnishes,
7 contracts for, or arranges air or sea transportation or
8 travel services only at retail directly to the general public
9 and not through any other seller of travel, all of which air
10 or sea transportation and travel services are to be
11 furnished by other, unrelated providers or sellers of
12 travel.

13 (6) The seller of travel is in compliance with the
14 requirements of Section 17550.20 and Article 2.7
15 (commencing with Section 17550.35). Any seller of travel
16 seeking to qualify for this exemption shall provide all
17 information necessary for the Attorney General or his or
18 her delegate to determine that the seller of travel meets
19 the criteria set forth in paragraphs (1) to (6), inclusive.

20 (7) A seller of travel in a transaction where the air or
21 sea transportation or travel services are furnished by a
22 business entity that (A) is located and providing
23 transportation or travel services outside of the United
24 States and (B) is not in compliance with the provisions of
25 this article, is exempt from the requirements of Section
26 17550.15 for that transaction if the seller of travel obtains
27 each passenger's written acknowledgment of receiving,
28 prior to making any payment, a clear, conspicuous, and
29 complete written disclosure that the provider of
30 transportation or travel services is not in compliance with
31 the Seller of Travel Law and the transaction is not
32 covered by the Travel Consumer Restitution Fund, and
33 of the attendant risks and consequences thereof.

34 (8) If the Attorney General or his or her delegate finds
35 pursuant to Section 17550.52 that Travel Consumer
36 Restitution Corporation has failed or ceased to operate, a
37 seller of travel who was a participant in the Travel
38 Consumer Restitution Fund shall no longer be exempt
39 from compliance with the requirements of Section
40 17550.15 and 17550.17.

1 *If Article 2.7 (commencing with Section 17550.35)*
2 *ceases to operate for any reason, including, but not*
3 *limited to, repeal pursuant to Section 17550.59, no seller*
4 *of travel shall be exempt from compliance with the*
5 *requirements of Sections 17550.15 and 17550.17 unless in*
6 *compliance with subdivision (b) or (c).*

7 (b) A seller of travel who is a participant, with respect
8 to all sales of air or sea transportation and travel services,
9 in a Consumer Protection Deposit Plan that meets the
10 criteria of paragraphs (1) to (3), inclusive, and who
11 complies with paragraph (4) need not comply with
12 Section 17550.15.

13 (1) The plan is operated and administered by an entity
14 who demonstrates to the satisfaction of the Attorney
15 General or his or her delegate that the operating and
16 administering entity is competent and reliable, and that
17 the plan will achieve fully the purposes and objectives of
18 this article. Each approved plan shall include provisions
19 requiring that each participating seller of travel (A) has
20 been engaged in business as a seller of travel in the United
21 States under the same ownership for not less than three
22 years, unless acquired or formed by a seller of travel
23 already participating and in good standing in the plan,
24 and (B) has deposited with the administrator of the plan
25 a minimum of one million dollars (\$1,000,000) in security
26 in the form of a bond, letter of credit, or certificate of
27 deposit, which security shall be (i) in favor solely of the
28 plan; (ii) held by the plan pursuant to the terms of the
29 plan; (iii) used solely to refund passenger payments or
30 deposits or to complete tours; and (iv) payable solely in
31 the event that (I) the seller of travel fails to refund
32 passenger payments or deposits due as a result of the
33 bankruptcy, insolvency, or cessation of operations of the
34 seller of travel or after the cancellation or material failure
35 by the seller of travel to complete performance of the
36 passenger's transportation or travel services, or (II) the
37 seller of travel fails to replace the security with another
38 meeting the criteria set forth in subparagraph (B) no
39 later than 30 days prior to its expiration.

1 (2) Claims filed against the Consumer Protection
2 Deposit Plan are decided within 45 days of receipt and
3 paid within 30 days of decision.

4 (3) The Consumer Protection Deposit Plan has been
5 reviewed and approved in writing by the Attorney
6 General or his or her delegate as meeting the criteria set
7 forth above, including a finding that the plan will
8 effectuate the purposes of this article. Should the
9 approved plan cease to provide the consumer protections
10 set forth in paragraph (1), the Attorney General or his or
11 her delegate shall revoke his or her approval forthwith.
12 Upon that revocation, the seller of travel shall no longer
13 be exempt from compliance with the requirements of
14 Sections 17550.15 and 17550.17.

15 (4) Any participant in a Consumer Protection Deposit
16 Plan seeking to qualify for this exemption shall provide all
17 information necessary for the Attorney General or his or
18 her delegate to determine (A) that the Consumer
19 Protection Deposit Plan in which the seller of travel is a
20 participant meets the criteria set forth in paragraphs (1),
21 (2), and (3), (B) that the seller of travel is a participant
22 in full compliance with the terms and conditions of an
23 approved consumer protection deposit plan, and (C)
24 provide a written agreement from the authorized
25 representative of the Consumer Protection Deposit Plan
26 in which the plan administrator agrees to give the office
27 of the Attorney General, Consumer Law Section
28 immediate written and telephonic notice in the event of
29 termination of the seller of travel's participation in the
30 plan.

31 (c) A seller of travel who utilizes for all transactions a
32 Consumer Protection Escrow Plan which meets the
33 criteria of paragraphs (1) to (6), inclusive, and who
34 complies with paragraph (7) is exempt from the
35 requirements of Section 17550.15.

36 (1) The plan is operated and administered as escrow
37 holder by a federally insured bank that demonstrates to
38 the Attorney General or his or her delegate that the
39 manner in which it will administer the plan will be
40 consistent with the purposes of this article. Each

1 approved escrow plan shall include provisions requiring
2 that all air tickets sold by participants in the plan be issued
3 through the Airlines Reporting Corporation.

4 (2) All funds delivered to the escrow holder, by cash,
5 check, charge card, or otherwise, are held and disbursed
6 by the escrow holder for the benefit of, and to protect the
7 interests of, the passenger.

8 (3) All funds are separately accounted for by booking
9 number and passenger name.

10 (4) Claims filed against the escrow plan are decided
11 within 45 days of receipt and paid within 30 days of
12 decision.

13 (5) All passenger funds are to be delivered to the
14 escrow holder as required by Section 17550.15.

15 (6) The Consumer Protection Escrow Plan has been
16 reviewed and approved in writing by the Attorney
17 General or his or her delegate as meeting the criteria set
18 forth herein, including a finding that the plan will
19 effectuate the purposes and objectives of this article.
20 Should the approved plan cease to provide the consumer
21 protections set forth in paragraphs (1) to (5), inclusive,
22 the Attorney General or his or her delegate shall revoke
23 his or her approval of the plan forthwith. Upon that
24 revocation, the seller of travel shall no longer be exempt
25 from compliance with the requirements of Sections
26 17550.15 and 17550.17.

27 (7) Any participant in a consumer protection plan
28 seeking to qualify for this exemption shall provide all
29 information necessary for the Attorney General or his or
30 her delegate to determine (A) that the Consumer
31 Protection Escrow Plan in which the seller of travel is a
32 participant meets the criteria set forth in paragraphs (1)
33 to (6), inclusive, (B) that the seller of travel is a
34 participant in full compliance with the terms and
35 conditions of an approved consumer protection escrow
36 plan, and (C) provide a written agreement from the
37 authorized representative of the Consumer Protection
38 Escrow Plan in which the plan administrator agrees to
39 give the office of the Attorney General, Consumer Law
40 Section, immediate written and telephonic notice in the

1 event of termination of the seller of travel's participation
2 in the plan.

3 SEC. 10. Section 17550.17 of the Business and
4 Professions Code is amended to read:

5 17550.17. (a) This section does not apply to sellers of
6 travel who are exempt from the requirements of Section
7 17550.15 pursuant to Section 17550.16.

8 (b) Upon payment in full by the passenger for air or
9 sea transportation and any related services with a credit
10 card or with cash, the seller of travel shall issue and
11 deliver the ticket or voucher to the passenger or his or her
12 designated agent within 72 hours.

13 (c) Upon payment in full by the passenger for air or sea
14 transportation and any related services with a check, the
15 seller of travel shall issue and deliver the ticket or voucher
16 to the passenger or his or her designated agent within 72
17 hours of the earlier of the following:

18 (1) The time the passenger's payment is credited to
19 the seller of travel's account.

20 (2) The expiration of the maximum hold period
21 specified in Section 10.190405 of Title 10 of the California
22 Code of Regulations.

23 (d) Tickets, vouchers, or receipts shall be deemed to
24 have been delivered if they have been turned over to an
25 independent third-party delivery service or the United
26 States Postal Service for regular delivery.

27 (e) Where the seller of travel is unable to issue tickets
28 or vouchers upon payment as set forth in subdivisions (b)
29 and (c), the seller of travel may comply with this section
30 by either: (1) forwarding to the air or sea carrier, or
31 provider of travel services the portion of the sum paid by
32 the passenger that is required by the air or sea carrier or
33 provider of travel services from the seller of travel in
34 order to provide the transportation or services purchased
35 by that passenger; the seller of travel may not offset or
36 reduce the amount forwarded by any amounts due or
37 claimed in connection with any other transaction, or (2)
38 complying with Sections 17550.13, 17550.14, and 17550.15.

39 (f) There is no violation of this section if (1)
40 compliance with this section was rendered impossible as

1 a direct result of an unforeseen condition beyond the
2 control of the seller of travel, and, (2) the seller of travel
3 complied with this section or made restitution to the
4 passenger within 30 days after the transportation or travel
5 services purchased by the passenger were not provided.

6 (g) For purposes of this section, “72 hours” means
7 three business days as defined in Section 9 of the Civil
8 Code.

9 SEC. 11. Section 17550.19 of the Business and
10 Professions Code is amended to read:

11 17550.19. In addition to any civil penalties provided in
12 this division, violation of this article is punishable as
13 follows:

14 (a) As a misdemeanor by a fine of not more than ten
15 thousand dollars (\$10,000), by imprisonment in a county
16 jail for not more than one year, or by both that fine and
17 imprisonment for each violation.

18 (b) In addition, any violation of Section 17550.14 or
19 subdivision (b) or (c) of Section 17550.15 where money
20 or real or personal property received or obtained by a
21 seller of travel for transportation or travel services from
22 any and all persons aggregates one thousand dollars
23 (\$1,000) or more in any consecutive 12-month period, or
24 the payment or payments by or on behalf of any one
25 passenger exceeds in the aggregate four hundred dollars
26 (\$400) in any 12-month period, is punishable either as a
27 misdemeanor or as a felony by imprisonment in the state
28 prison for 16 months, or two or three years, by a fine of not
29 more than twenty-five thousand dollars (\$25,000), or by
30 both that fine and imprisonment for each violation.

31 (c) In addition, any intentional use for any purpose of
32 a false seller of travel registration number, with intent to
33 defraud, by an unregistered seller of travel is punishable
34 as a misdemeanor or felony as provided in this section.

35 (d) Any violation of Section 17550.15 shall be a
36 misdemeanor and shall be punished as provided in this
37 section. Every act in violation of Section 17550.15 may be
38 prosecuted as a separate and distinct violation and
39 consecutive sentences may be imposed for each violation.

1 (e) Sellers of travel shall also comply with Sections
2 17537, 17537.1, and 17537.2 of the Business and Professions
3 Code and all other applicable laws. This section shall not
4 be construed to preclude the applicability of any other
5 provision of the criminal law of this state that applies or
6 may apply to any transaction.

7 SEC. 12. Section 17550.20 of the Business and
8 Professions Code is amended to read:

9 17550.20. (a) Not less than 10 days prior to doing
10 business in this state, a seller of travel shall apply for
11 registration with the office of the Attorney General by
12 filing with the Consumer Law Section the information
13 required by Section 17550.21 and a filing fee of one
14 hundred dollars (\$100) for each location from which the
15 seller of travel conducts business. A late fee of five dollars
16 (\$5) per day, up to a maximum of five hundred dollars
17 (\$500), shall be paid for each day after the time specified
18 by this section until the filing fee and the information
19 required by Section 17550.21 are received. No
20 registration shall be issued or approved until the late fee
21 has been paid. A seller of travel shall be deemed to do
22 business in this state if the seller of travel solicits business
23 from locations in this state or solicits prospective
24 purchasers who are located in this state.

25 (b) Registration shall be valid for one year from the
26 effective date thereof shown on the registration issued by
27 the office of the Attorney General and may be annually
28 renewed by making the filing required by Section
29 17550.21 and paying a filing fee of one hundred dollars
30 (\$100) for each location from which the seller of travel
31 conducts business. A late fee of five dollars (\$5) per day,
32 up to a maximum of five hundred dollars (\$500), shall be
33 paid for each day after the time specified by this section
34 until the filing fee and the information required by
35 Section 17550.21 are received. No registration shall be
36 renewed until the late fee has been paid.

37 (c) Whenever, prior to expiration of a seller of travel's
38 annual registration, there is a material change in the
39 information required by Section 17550.21, the seller of
40 travel shall, within 10 days, file an addendum updating

1 the information with the Consumer Law Section of the
2 office of the Attorney General.

3 (d) (1) Not less than 10 days prior to the transfer or
4 sale of any interest in a seller of travel, the selling or
5 transferring owner shall file with the office of the
6 Attorney General, Seller of Travel Program, a notice of
7 encumbrance, sale, or transfer of ownership, using a form
8 provided for that purpose by the office of Attorney
9 General. The notice shall provide the information
10 required pursuant to subdivision (d) of Section 17550.21
11 as to each transferee.

12 (2) Until the time the notice of encumbrance, sale, or
13 transfer of ownership required in paragraph (1) is filed
14 as required, the selling, encumbering, or transferring
15 owner is responsible for all acts of and obligations
16 imposed by law on the transferee sellers of travel to the
17 same extent as they would have been responsible had
18 there been no transfer, sale, or encumbrance.

19 (e) The office of the Attorney General shall suspend
20 the registration of any seller of travel who (1) fails to
21 make any payment required pursuant to Article 2.7
22 (commencing with Section 17550.35) or (2) submits a
23 check in payment of a registration fee or late fee required
24 by this section that is not honored by the institution on
25 which it is drawn. The registration of the seller of travel
26 shall be suspended until all such payments due have been
27 collected.

28 (f) The Attorney General may, at his or her discretion
29 and subject to supervision by the Attorney General or his
30 or her delegate, contract out all or any part of the
31 processing of registrations required by this section.

32 (g) This section does not apply to an individual,
33 natural person who meets all of the following conditions:

34 (1) Has a written contract with a registered seller of
35 travel to act on that registered seller of travel's behalf in
36 offering or selling air or sea transportation and other
37 travel goods or services in connection with the
38 transportation.

39 (2) Acts only on behalf of a registered seller of travel
40 with whom the person has a written contract in the offer

1 or sale to a passenger of air or sea transportation and other
2 goods or services in connection with the transportation
3 and sells no other air or sea transportation or travel
4 services to that passenger.

5 (3) Provides air or sea transportation or travel services
6 that are offered or sold pursuant to the official agency
7 appointment of the registered seller of travel with whom
8 the person has a written contract.

9 (4) Does not receive any consideration for air or sea
10 transportation or other travel services from the
11 passenger.

12 (5) Requires the passenger to pay all consideration for
13 air or sea transportation or other travel services directly
14 to the air carrier or ocean carrier or to the registered
15 seller of travel.

16 (h) Whenever the Attorney General determines that
17 a registration application is accurate and complete, the
18 application shall be processed and a registration
19 certificate shall be issued to the seller of travel within 21
20 days.

21 SEC. 13. Section 17550.21 of the Business and
22 Professions Code is amended to read:

23 17550.21. Each filing pursuant to Section 17550.20
24 shall contain the following information:

25 (a) The name or names of the seller of travel,
26 including the name under which the seller of travel is
27 doing or intends to do business, if different from the name
28 of the seller of travel and a copy of the current fictitious
29 business statement filed with the responsible
30 governmental entity, whenever a filing is required by
31 law.

32 (b) The seller of travel's business form and place of
33 organization and, if operating under a fictitious business
34 name, the location where the fictitious name has been
35 registered.

36 (c) The complete street address or addresses of all
37 locations from which the seller of travel will be
38 conducting business, including, but not limited to,
39 locations at which telephone calls will be received from,
40 or made to, passengers or other sellers of travel. The

1 statement shall designate which location is the principal
2 place of business.

3 (d) The complete business and residential address, the
4 business telephone number, the driver's license number
5 and state of issuance or equivalent personal
6 identification, and the date of birth of each owner and
7 principal of the seller of travel. "Owner" means a person
8 who owns or controls 10 percent or more of the equity of,
9 or otherwise has claim to 10 percent or more of the net
10 income of, a seller of travel. "Principal" means an owner,
11 an officer of a corporation, a general partner of a
12 partnership, or a sole proprietor of a sole proprietorship.

13 (e) A statement as to whether the seller of travel, any
14 owner, or principal, or any other seller of travel owned or
15 managed by any owner or principal of the seller of travel,
16 or the seller of travel itself has had entered against that
17 person or entity any judgment, including a stipulated
18 judgment, order, made a plea of nolo contendere, or been
19 convicted of any criminal violation. The statement shall
20 identify the person, the court or administrative agency
21 rendering the judgment, order, or conviction, the docket
22 number of the matter, and the date of the judgment,
23 order, or conviction; where the judgment, order, or
24 record of conviction is filed; and the nature of the case or
25 judgment. This subdivision does not require disclosure of
26 marital dissolution, child support, or child custody
27 proceedings.

28 (f) A copy of the travel certificates, if any, that are or
29 will be sold, marketed, or distributed to any person or
30 entity by the seller of travel.

31 (g) The seller of travel shall file with the Attorney
32 General a signed and dated statement indicating (1) the
33 account number of each trust account required by this
34 article, (2) the name and address of each financial
35 institution at which the seller of travel maintains a trust
36 account required by this article, (3) any registration
37 number issued to the seller of travel by the Airline
38 Reporting Corporation or the International Association of
39 Travel Agents Network, and (4) a consent form
40 consenting to the Attorney General, a district attorney, or

1 their representatives obtaining directly from the Airlines
2 Reporting Corporation, International Association of
3 Travel Agents Network, a seller of transportation,
4 provider of transportation, or provider of travel services
5 any information related to an investigation of a seller of
6 travel's compliance with this section. The consent form
7 shall be provided by the Attorney General. If a bond is
8 maintained in lieu of the trust account, a copy of that
9 bond shall be filed with the Attorney General.

10 (h) A statement signed by each owner and principal
11 granting permission to the office of the Attorney General
12 to obtain from any financial institution or credit union at
13 which any trust account required by Section 17550.15 is
14 maintained, information relating to that trust account, as
15 set forth in paragraph (2) of subdivision (f) of Section
16 17550.15.

17 (i) The information required by this section shall be
18 verified by a declaration signed by each owner and
19 principal of the seller of travel, or in the case of a
20 registered seller of travel that does business in California,
21 from one or more locations in California, and that meets
22 the requirements of paragraph (16) of subdivision (e) of
23 Section 17511.1, by a duly authorized officer of the
24 corporation, under penalty of perjury pursuant to the
25 laws of the State of California. The declaration shall
26 specify the date and location of signing. Upon
27 reregistration by a previously registered seller of travel,
28 the information required by this section may be verified
29 by the chief executive officer of a corporation, managing
30 partner of a partnership, or manager of a limited liability
31 company.

32 SEC. 14. Section 17550.23 of the Business and
33 Professions Code is amended to read:

34 17550.23. (a) The Travel Consumer Restitution
35 Corporation shall notify the office of the Attorney
36 General whenever a seller of travel with its principal
37 place of business in California, who does business with
38 persons located in California, is in compliance with
39 Article 2.7 (commencing with Section 17550.35).

(b) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because such seller of travel claims to meet the requirements of subdivision (b) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16.

(c) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because such seller of travel claims to meet the requirements of subdivision (c) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16.

SEC. 15. Section 17550.30 of the Business and Professions Code is amended to read:

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fines and fees, including late fees, collected pursuant to this article shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants.

SEC. 16. Section 17550.32 of the Business and Professions Code is repealed.

SEC. 17. Section 17550.33 of the Business and Professions Code is repealed.

SEC. 18. Section 17550.34 of the Business and Professions Code is repealed.

SEC. 19. Section 17550.37 of the Business and Professions Code is amended to read:

17550.37. (a) "Person aggrieved," as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, who has sustained

1 a loss as a result of the failure of a seller of travel to refund
2 passenger payments made as payment for air or sea
3 transportation or travel services, where a refund is due as
4 a result of the bankruptcy, insolvency, cessation of
5 operations, or material failure to provide the
6 transportation or travel services purchased by the
7 passenger. "Loss," as used herein, shall be limited to losses
8 that are incurred in a transaction with a seller of travel
9 who, at the time of sale, was a paid-up participant in the
10 Travel Consumer Restitution Fund and was registered
11 pursuant to Section 17550.20. "Person aggrieved" shall
12 not mean or include a passenger in a transaction where
13 the air or sea transportation or travel services are
14 furnished by a business entity that (a) is located and
15 providing transportation or travel services outside of the
16 United States and (b) is not in compliance with Article 2.6
17 (commencing with Section 17550).

18 (b) Any person aggrieved who files a ~~successful~~ claim
19 for payment from the Travel Consumer Restitution Fund
20 thereby waives his or her right to bring any action at law
21 or equity that (1) is against the seller of travel as to whom
22 the claim is made and (2) arises from the transaction that
23 is the subject of the claim against the restitution fund. The
24 claim form required by Section 17550.46 shall include a
25 clear and conspicuous notice of the waiver.

26 (c) The waiver of rights provided for by subdivision
27 (b) shall not apply to any claimant whose claim is denied
28 on any of the following grounds, as set forth in the
29 statement of decision required by subdivision (d) of
30 Section 17550.47:

31 (1) The seller of travel was not, at the time of sale, a
32 paid-up participant in the Travel Consumer Restitution
33 Fund, as required by subdivision (a).

34 (2) The seller of travel was not, at the time of sale,
35 registered pursuant to Section 17550.20.

36 (3) The claimant was not located in California at the
37 time of sale, as required by subdivision (a).

38 SEC. 20. Section 17550.38 of the Business and
39 Professions Code is amended to read:

1 17550.38. (a) It is the purpose of the Travel
2 Consumer Restitution Corporation to provide restitution
3 to a person aggrieved, subject to the limitations set forth
4 in this article. The restitution is secondary to any other
5 source of compensation or reimbursement to which a
6 person aggrieved may be entitled. Nothing herein shall
7 be construed to require a person aggrieved to bring a civil
8 action to obtain compensation or reimbursement in order
9 to obtain payment from the restitution fund.

10 (b) The restitution shall be paid from the Travel
11 Consumer Restitution Fund established by the Travel
12 Consumer Restitution Corporation.

13 (c) The Travel Consumer Restitution Corporation
14 may request legal counsel, representation, and advice
15 from the office of the Attorney General.

16 SEC. 21. Section 17550.41 of the Business and
17 Professions Code is amended to read:

18 17550.41. (a) The Board of Directors of the Travel
19 Consumer Restitution Corporation shall be composed of
20 six directors, as follows:

21 (1) One public consumer representative member
22 appointed by the Director of the Department of
23 Consumer Affairs.

24 (2) One employee of the Department of Justice,
25 assigned by the office of the Attorney General, who shall
26 serve as an ex officio, nonvoting member.

27 (3) Four directors who are participants in the Travel
28 Consumer Restitution Fund.

29 (b) The director appointed pursuant to paragraph (1)
30 of subdivision (a) shall serve until the appointment is
31 revoked or another appointment is made, or until the
32 director resigns.

33 (c) Participant directors shall be elected by a balloting
34 of all participants in the Travel Consumer Restitution
35 Fund in an election to be conducted by the Travel
36 Consumer Restitution Corporation in February of each
37 year. Participant directors shall be elected to serve
38 two-year terms, with two of the four participant directors
39 being elected each year to staggered two-year terms.

(3) The Travel Consumer Restitution Corporation shall adopt bylaw provisions setting forth procedures for the nomination, qualifications, and election of the four participant directors, consistent with this section.

(4) A director who does not qualify to be a participant or who otherwise becomes unable to serve shall not continue to serve as director. The board of the Travel Consumer Restitution Corporation shall adopt rules setting forth the procedures to determine that a director is no longer able to serve as a director, and for the board to elect a successor to serve as director until the next election.

SEC. 22. Section 17550.43 of the Business and Professions Code is amended to read:

17550.43. (a) The Travel Consumer Restitution Corporation shall establish and maintain an operations fund for the payment of costs of operations and administration. The corporation shall prepare, prior to its fiscal yearend, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims.

(b) (1) All participants making their initial payment of assessments shall pay to the Travel Consumer Restitution Corporation an initial, one-time seventy-five dollar (\$75) assessment per location from which the participant does business in the state in order to provide additional funding for the operations of the corporation, as those operations are authorized by the corporation's board of directors.

(2) All participants making their initial payment of assessments shall pay to the Travel Consumer Restitution Corporation an initial, one-time two hundred dollar (\$200) assessment per location from which the participant does business in this state in order to provide additional funding for the restitution fund.

(c) All participants who were sellers of travel in any year, and who did not pay a Travel Consumer Restitution Corporation assessment in that year shall, when making a payment of assessment in a subsequent year, pay the

1 Travel Consumer Restitution Corporation all assessments
2 for the operations of the corporation and the restitution
3 fund for the years in which they were in business as were
4 billed and paid by participants in those years.

5 (d) The Travel Consumer Restitution Corporation
6 shall establish a restitution fund for the payment of
7 claims. All claims shall be paid from the restitution fund.

8 (1) The restitution fund shall be in the form of a trust
9 account maintained in the State of California with a
10 federally insured bank that shall be selected by the Board
11 of Directors of the Travel Consumer Restitution
12 Corporation and shall be approved by the office of the
13 Attorney General. The Board of Directors of the Travel
14 Consumer Restitution Corporation or its delegate shall
15 serve as trustee.

16 (2) The restitution fund shall meet the following
17 criteria:

18 (A) The trustee shall deposit all restitution funds
19 received into the trust account.

20 (B) The trustee shall maintain a separate accounting
21 for disbursements and collections on account of claims
22 against each participant. Quarterly reports shall be
23 provided to the office of the Attorney General, Consumer
24 Law Section.

25 (C) The trustee shall disburse funds from the trust as
26 directed by the Travel Consumer Restitution
27 Corporation pursuant to Section 17550.47.

28 (D) The trustee may only invest the operations fund
29 and trust funds in any of the securities described in
30 subdivision (a) or (b) of Section 16430 of the Government
31 Code.

32 SEC. 23. Section 17550.44 of the Business and
33 Professions Code is amended to read:

34 17550.44. (a) In addition to the assessments required
35 by Section 17550.43, the Travel Consumer Restitution
36 Corporation shall bill and collect from each participant an
37 annual assessment that in the aggregate shall consist of
38 assessments for the operations fund and the restitution
39 fund. For each participant, the due date of that annual
40 assessment shall be 30 days prior to the annual renewal

1 date for registration pursuant to Section 17550.20 *or* 45
2 *days after billing, whichever is later.* For a participant
3 registering for the first time, the assessments required by
4 Section 17550.43 shall be due 10 days prior to the seller of
5 travel doing business in this state. A late fee of five dollars
6 (\$5) per day, up to a maximum of five hundred dollars
7 (\$500), shall be paid for each day after the due date
8 specified in this section until the assessment is paid.

9 (b) The annual assessment for the operations fund
10 shall be determined no later than January 15 of each year
11 for the next fiscal year in an amount that does not exceed
12 the amount necessary to fund the operations and
13 administration of the corporation, based upon the annual
14 operational budget required by subdivision (a) of Section
15 17550.43, and shall become effective immediately. The
16 annual assessment for the operations fund shall not
17 exceed thirty-five dollars (\$35) per year for each location
18 in the state from which a participant does business.

19 (c) If, as of January 15 of any year, the balance in the
20 restitution fund is less than one million six hundred
21 thousand dollars (\$1,600,000), the Travel Consumer
22 Restitution Corporation shall make an assessment of
23 participants, up to a maximum amount of two hundred
24 dollars (\$200) for each location in the state from which a
25 participant does business, to bring the restitution fund to
26 an expected balance of one million six hundred thousand
27 dollars (\$1,600,000). Every participant's assessment shall
28 be determined pro rata based upon the ratio of the
29 number of locations in the state from which the
30 participant does business to the total number of locations
31 for all participants as of the preceding December 15.

32 (d) If, on May 1 or October 15 of any year, the balance
33 in the restitution fund is less than nine hundred thousand
34 dollars (\$900,000), the corporation shall make an
35 emergency assessment of participants, not more than
36 twice per year, up to a maximum amount of one hundred
37 fifty dollars (\$150) per year for each location in the state
38 from which the participant does business, for deposit in
39 the trust account to return the level of the restitution
40 fund to an expected balance of one million six hundred

1 thousand dollars (\$1,600,000). The corporation shall
 2 estimate the total cost of billing, collecting, and
 3 processing the emergency restitution fund assessment
 4 and shall assess and collect, together with the emergency
 5 restitution fund assessment, an emergency operations
 6 fund assessment that is in the aggregate sufficient to offset
 7 the estimated cost. Each participant's assessments shall
 8 be determined pro rata based upon the ratio of the
 9 number of locations in the state from which the
 10 participant does business to the total number of locations
 11 for all participants as of the ~~preceding June 15~~ *first day of*
 12 *the preceding month*. The board of directors shall adopt
 13 rules for the notification of emergency assessments.

14 (e) In addition to the assessments required by Section
 15 17550.43 and subdivision (d), if at any time during the
 16 fiscal year the board of directors of the Travel Consumer
 17 Restitution Corporation determines that the operations
 18 fund ~~is~~ *will be* insufficient to pay the costs of operations
 19 and administration for the current or next fiscal year, the
 20 corporation ~~shall~~ *as determined by the board of directors,*
 21 *shall do either or both of the following:* (A) make an
 22 emergency assessment of participants, not more than
 23 once per fiscal year, up to a maximum amount of sixty-five
 24 dollars (\$65) per year for each location in the state from
 25 which a participant does business. The emergency
 26 assessment may be billed and collected either on an
 27 emergency basis from all participants upon the making of
 28 the assessment, or in conjunction with each participant's
 29 annual assessment pursuant to subdivision (a) of Section
 30 17550.44, (B) *transfer any or all interest earned on the*
 31 *Restitution Fund to the Operations Fund, provided that*
 32 *no transfer results in a restitution fund balance of less than*
 33 *one million two hundred thousand dollars (\$1,200,000).*

34 (f) The assessment required by subdivision (d) or (e)
 35 shall be due ~~30~~ *45* days from the date the bill for that
 36 assessment is mailed by the Travel Consumer Restitution
 37 Corporation. A late fee of five dollars (\$5) per day, up to
 38 a maximum of five hundred dollars (\$500), shall be paid
 39 for each day after the due date specified in this section
 40 until the assessment is paid.

(g) The Travel Consumer Restitution Fund shall report to the office of the Attorney General each levy of assessment within 10 business days after the levy.

SEC. 24. Section 17550.46 of the Business and Professions Code is amended to read:

17550.46. (a) The Attorney General or his or her delegate shall approve any claim form which shall be provided to a person aggrieved by the Travel Consumer Restitution Corporation to be submitted by a person aggrieved in order to obtain payment from the restitution fund. The claim form shall require the person aggrieved to provide the corporation with information which is sufficient to decide whether payment is to be made to that person. The information must include all of the following:

(1) The name, address, and telephone number of the person aggrieved.

(2) The date, form, and amount of each payment and evidence thereof.

(3) The amount of the claim and specific basis therefor.

(4) Any written agreements, correspondence, or other documentation relevant to the transaction and to the transportation or travel services which were purchased and not provided.

(5) Identification of the transportation or travel services which were purchased and not provided.

(6) Description of any payment or reimbursement or alternative transportation or travel services received by the person aggrieved for the transportation or purchased travel services which were not provided.

(b) If any required information is unavailable to the person aggrieved, the person shall so state in the claim form, explaining why the information is unavailable. The corporation may require any other additional information as may be necessary to decide the claim. Failure to provide any required information or documentation *or an adequate explanation as to why the information is unavailable* shall constitute grounds for denial of a claim.

(c) The person aggrieved who submits a claim form shall sign the form stating, under penalty of perjury pursuant to the laws of the State of California, that the information contained in the form and any statements by the person making the claim submitted therewith are true and correct.

SEC. 25. Section 17550.47 of the Business and Professions Code is repealed.

SEC. 26. Section 17550.47 is added to the Business and Professions Code, to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars (\$50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars (\$50).

(2) Any processing fee required by paragraph (1) shall be nonrefundable. However, if a claim is denied on the basis that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, the processing fee shall be refunded to the person aggrieved upon denial of the claim.

(3) The claim shall be filed within 60 days of the date upon which the person aggrieved becomes aware, or should have become aware, of the loss. However, any person aggrieved who did not receive the notice required by subdivision (h) of Section 17550.13 shall have until 60 days after receiving a notice setting forth the information required by subdivision (h) of Section 17550.13, or 60 days after the date upon which the person aggrieved becomes aware, or should have become aware, of the loss,

1 whichever is later, within which to file a claim. In no
2 event shall a person aggrieved have more than six months
3 after the scheduled date of completion of travel within
4 which to file a claim with the Travel Consumer
5 Restitution Fund.

6 (b) A person aggrieved may recover from the Travel
7 Consumer Restitution Fund an amount not to exceed
8 fifteen thousand dollars (\$15,000) per person aggrieved,
9 not to exceed the amount paid to the participant by or on
10 behalf of the person aggrieved for the transportation or
11 travel services. Payments from the restitution fund shall
12 be limited to restitution for sums paid for transportation
13 or travel services and shall not include any other amounts,
14 including, but not limited to, payment for lost wages, pain
15 and suffering, emotional distress, travel insurance, lost
16 luggage, or any consequential damages. The person
17 aggrieved shall not be entitled to receive attorney's fees
18 in connection with a filed claim or on appeal.

19 (c) All claims are to be decided on the written record
20 before the corporation, with no hearing to be held. The
21 record shall consist of a fully executed and complete claim
22 *form*, any other documentation submitted by the
23 claimant or the participant, and any documents or reports
24 submitted by staff or the designated representative of the
25 office of the Attorney General. Claims are to be decided
26 within 45 days of receipt unless (1) the designated
27 representative of the office of the Attorney General
28 requests a continuance to obtain and submit information,
29 or (2) the Travel Consumer Restitution Corporation
30 determines that additional information or
31 documentation is required to decide the claim. In either
32 case, the claim shall be decided within 45 days of receipt
33 of all additional information or documentation. A claim
34 not decided timely shall be deemed granted.

35 (d) Whenever the Travel Consumer Restitution
36 Corporation denies a claim in whole or in part, it shall
37 provide to the claimant a written statement of decision
38 setting forth the factual and legal basis for the denial.

39 (e) A claimant may request reconsideration of an
40 adverse decision of the Travel Consumer Restitution

1 Corporation by mailing a written request, accompanied
2 by a processing fee of fifty dollars (\$50) paid by check or
3 money order, within 20 days of the date a notice of denial
4 and statement of decision was mailed to the claimant. Any
5 check for the processing fee that is returned unpaid to the
6 Travel Consumer Restitution Corporation by the
7 financial institution upon which it is drawn shall be
8 returned to the claimant and the request for
9 reconsideration shall not be determined until the
10 claimant has paid the fifty dollars (\$50) processing fee.

11 (f) The Travel Consumer Restitution Corporation
12 shall, within 45 days of receipt of the request, either
13 decide the request or advise the claimant that additional
14 information or documentation is needed, and if the
15 decision is a denial in whole or in part, it shall provide to
16 the claimant and seller of travel a written statement of
17 decision setting forth the factual and legal basis for the
18 decision. No appeal may be taken pursuant to subdivision
19 (g) until reconsideration has been requested and
20 decided. The claimant shall not be entitled to any
21 attorney's fees incurred in connection with presentation
22 of a claim or request for reconsideration.

23 (g) No decision of the Travel Consumer Restitution
24 Corporation granting or denying a claim in whole or part
25 shall be subject to review or appeal except as provided in
26 this section. A claimant may seek review of the denial, in
27 whole or part, of a claim by filing a notice of appeal after
28 having served the notice by mail on the Travel Consumer
29 Restitution Corporation. The notice of appeal shall be
30 filed and served on the Travel Consumer Restitution
31 Corporation not later than 30 days after a written
32 statement of decision on a request for reconsideration has
33 been mailed to the claimant. The notice of appeal from
34 a decision of the Travel Consumer Restitution
35 Corporation shall be filed with the clerk of the superior
36 court either in the county in which the principal place of
37 business of the Travel Consumer Restitution Corporation
38 is located, or in the county in which the claimant was a
39 resident at the time the claimant purchased the
40 transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file its response and the record of the claim before the corporation with the clerk of the superior court within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall apply a preponderance of the evidence standard of review. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, and the decision of the superior court shall be appealable by either party. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Corporation.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall not be entitled to an award in excess of the amount of the original claim.

(l) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for ~~request for reconsideration and~~ appeal has ~~passed or the right to an appeal is waived in writing by the claimant~~ *passed*. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund whenever the judgment becomes final. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel

1 Consumer Restitution Corporation ceases to operate
2 pursuant to the terms of Section 17550.52, any remaining
3 trust funds shall be allocated on a pro rata basis to claims
4 accruing prior to the corporation ceasing to operate, after
5 payment of outstanding debts and liabilities as provided
6 in Section 17550.57.

7 (m) A claim shall require a majority of at least three
8 affirmative votes for denial, otherwise it shall be deemed
9 granted.

10 SEC. 27. Section 17550.53 of the Business and
11 Professions Code is amended to read:

12 17550.53. (a) The Travel Consumer Restitution
13 Corporation shall have independent authority to
14 investigate claims filed by persons aggrieved pursuant to
15 Section 17550.47.

16 (b) The corporation, upon the request of the office of
17 the Attorney General, may participate in an examination
18 or investigation of the books and records of a participant
19 for the purpose of evaluating a claim related to that seller
20 of travel. There shall be no liability on the part of, and no
21 cause of action of any nature shall arise against, the State
22 of California or any of its employees, agents, or
23 representatives for the release of any information
24 furnished to the Travel Consumer Restitution
25 Corporation pursuant to this subdivision or in connection
26 with the investigation or review of any claim.

27 (c) With the consent of a majority of its directors, the
28 corporation, in order to fulfill its obligations under this
29 article, may appoint an independent certified public
30 accountant or public accountant or hire or appoint a
31 specialized committee or employees to conduct an
32 examination or investigation authorized by this section.
33 Any reports as a result thereof shall be furnished to the
34 office of the Attorney General.

35 (d) To assist the corporation in evaluating a claim
36 related to a participant, the participant shall provide or
37 make available for inspection by the corporation those
38 books, accounts, bank account records, and files which are
39 necessary for the corporation to evaluate the claim.

1 (e) The corporation, any participant, an agent of the
2 corporation or any person other than a law enforcement
3 agency who uses information obtained under this section
4 for any purpose not authorized in this article or Article 2.6
5 (commencing with Section 17550) is guilty of a
6 misdemeanor.

7 (f) Costs and expenses for any examination under this
8 section shall be paid for by the participant if a claim
9 directly related to that seller of travel has been approved
10 and payment has been made to a person aggrieved. The
11 corporation may maintain an action for recovery of these
12 examination costs and expenses in any court of competent
13 jurisdiction, and shall recover its reasonable costs and
14 attorney's fees as an item of costs, as provided for in
15 paragraph (10) of subdivision (a) and paragraph (5) of
16 subdivision (c) of Section 1033.5 of the Code of Civil
17 Procedure.

18 SEC. 28. Section 17550.57 of the Business and
19 Professions Code is amended to read:

20 17550.57. If the Travel Consumer Restitution
21 Corporation is dissolved or ceases to exist, or if the
22 Attorney General or his or her delegate makes a
23 determination pursuant to Section 17550.52 that the
24 corporation has failed or ceased to operate, all
25 outstanding debts, obligations of the corporation, and
26 amounts due for services rendered shall first be paid from
27 the remaining assets, including the restitution fund. The
28 assets remaining after settling all those liabilities shall be
29 distributed to the participants, less the costs of that
30 distribution. The distribution to participants shall be pro
31 rata based upon the ratio of the number of locations in the
32 state from which the participant does business to the total
33 number of locations for all registered participants *at the*
34 *time the corporation is dissolved or ceases to exist.*

35 SEC. 29. Section 17550.58 of the Business and
36 Professions Code is amended to read:

37 17550.58. All costs and expenses incurred by the
38 Department of Justice in the administration of this article,
39 including those incurred pursuant to Section 17550.38,
40 shall be paid to the department by the Travel Consumer

1 Restitution Corporation. The department may institute
2 an action for the recovery of costs and expenses incurred
3 in the administration of this article in any court of
4 competent jurisdiction.

5 SEC. 30. Section 17550.59 of the Business and
6 Professions Code is repealed.

7 SEC. 31. No reimbursement is required by this act
8 pursuant to Section 6 of Article XIII B of the California
9 Constitution because the only costs that may be incurred
10 by a local agency or school district will be incurred
11 because this act creates a new crime or infraction,
12 eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition
15 of a crime within the meaning of Section 6 of Article
16 XIII B of the California Constitution.

17 Notwithstanding Section 17580 of the Government
18 Code, unless otherwise specified, the provisions of this act
19 shall become operative on the same date that the act
20 takes effect pursuant to the California Constitution.

